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## FACSIMILE TRANSMITTAL

## TO:

Name: Mail Stop AMENDMENT  
Group Art Unit 3738/Examiner Thomas Barrett

Firm: U.S. Patent & Trademark Office

Fax No.: 703-872-9306

Subject: U.S. Patent Application No. 10/669,287

Gary Karlin Michelson

Filed: September 24, 2003

EXPANDABLE PUSH-IN ARCUATE

INTERBODY SPINAL FUSION IMPLANT

WITH TAPERED CONFIGURATION DURING

INSERTION

Attorney Docket No. 101.0092-02000

Customer No. 22882

Confirmation No.: 6591

## FROM:

Name: Thomas H. Martin, Esq.

Phone No.: 330-877-2277

No. of Pages (including this): 16

Date: December 29, 2004

Confirmation Copy to Follow: NO

## Message:

## CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that the attached Transmittal Form (in duplicate; \$1,330.00 total amount to cover the \$1,020 three-month extension fee, \$130 Terminal Disclaimer fee, and \$180 IDS fee is to be charged to Deposit Account No. 50-1066), Reply to Office Action with attachment, Terminal Disclaimer, and Information Disclosure Statement and Form PTO-1449 are being facsimile transmitted to the U.S. Patent and Trademark Office on December 29, 2004.

  
Sandra L. Blackmon

If there is a problem with this transmission please call Sandy Blackmon at 330-877-1202 or the sender at the number above.

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FORM PTO-1083

Attorney Docket No.: 101.0092-02000  
Customer No. 22882

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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DEC 29 2004

In re application of:

Gary Karlin Michelson

Serial No: 10/669,287

Filed: September 24, 2003

For: EXPANDABLE PUSH-IN ARCUATE  
INTERBODY SPINAL FUSION  
IMPLANT WITH TAPERED  
CONFIGURATION DURING  
INSERTION

Confirmation No.: 6591

Art Unit: 3738

Examiner: Thomas Barrett

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Transmitted herewith is a Reply to the Office Action dated June 29, 2004 in the above-identified application.

- ☐ No additional fee is required.
- ☒ Applicant hereby requests a three-month extension of time to respond to the above Office Action.
- ☒ Terminal Disclaimer is attached.
- ☒ Information Disclosure Statement with Form PTO-1449 is attached.
- ☒ The total amount of \$1,330.00 (to cover the \$1,020 three-month extension fee, \$130 Terminal Disclaimer fee, and \$180 IDS fee) is to be charged to Deposit Account No. 50-1066.
- ☒ The Commissioner is hereby authorized to charge any deficiencies of fees associated with this communication or credit any overpayment to Deposit Account No. 50-1066.  
**A copy of this sheet is enclosed.**
- ☒ Any filing fees under 37 C.F.R. § 1.16 for the presentation of extra claims
- ☒ Any patent application processing fees under 37 C.F.R. § 1.17

Respectfully submitted,  
MARTIN & FERRARO, LLP

Date: December 29, 2004

By: Thomas H. Martin  
Thomas H. Martin  
Registration No. 34,3831557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone: (330) 877-0700  
Facsimile: (330) 877-2030

FORM PTO-1083

Attorney Docket No.: 101.0092-02000  
Customer No. 22882

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Gary Karlin Michelson

Serial No: 10/669,287

Filed: September 24, 2003

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INTERBODY SPINAL FUSION  
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Date: December 29, 2004

By:   
Thomas H. Martin  
Registration No. 34,3831557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone: (330) 877-0700  
Facsimile: (330) 877-2030



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
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www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/772,309	01/29/2001	Gary Karlin Michelson	101.0092-00000	8587

22882 7590 12/31/2001

MARTIN & FERRARO  
14500 AVION PARKWAY  
SUITE 300  
CHANTILLY, VA 201511101

EXAMINER

BARRETT, THOMAS C

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 12/31/2001

# COPY

Please find below and/or attached an Office communication concerning this application or proceeding.

# RECEIVED

JAN - 4 2002

MARTIN &amp; FERRARO LLP

DOCKETED BY: *tmm*  
ON: *1-5-02*  
ACTION:  
REQUIRED: *elect*

DATE  
REQUIRED: *1-31-02*

PTO-90C (Rev. 07-01)

*1-10 6-30-02*

**Office Action Summary****Application No.**

09/772,309

**Applicant(s)**

MICHELSON, GARY KARLIN

**Examiner**

Thomas C. Barrett

**Art Unit**

3738

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-284 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-284 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_

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## DETAILED ACTION

### *Election/Restrictions*

This application contains claims directed to the following patentably distinct species of the claimed invention:

Species I: Figs. 1, 2, 3, 4, 5, 6, 7 and 10-13

Species II: Figs. 2A, 3A, 4A, and 5A

Species III: Figs. 14A and 16

Species IV: Figs. 17, 18A, 18B and 19

Species V: Figs. 22A, 22B and 23

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic to species I, II, III and V, and claim 182 is generic to species I, II and III. Claim 116 reads only on species V and claim 284 reads only on species IV.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include

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Art Unit: 3738

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all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

A telephone call was made to Thomas Martin's office on December 26, 2001 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas C. Barrett whose telephone number is (703) 308-8295. The examiner can normally be reached Tuesday-Friday between 9:00 A.M. and 6:00 P.M.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (703) 308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3580 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308 0850.



Thomas Barrett  
December 26, 2001



DINH X. NGUYEN  
PRIMARY EXAMINER